NO. 6010

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

TERRITORY OF ALASKA,
Appellant,

vs.

FIRST NATIONAL BANK OF FAIRBANKS,
Appellee.

APPELLANT'S BRIEF

JOHN RUSTGARD,
Attorney General of Alaska,
Attorney for Appellant.

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IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH DISTRICT

TERRITORY OF ALASKA, *Plaintiff and Appelant,* *vs.* FIRST NATIONAL BANK OF FAIRBANKS, a corporation, *Defendant and Appellee.*	BRIEF

STATEMENT OF CASE

This is an appeal from a judgment dismissing plaintiff's cause for want of evidence to sustain the allegations of the information.

The only question before the court is whether the evidence was sufficient to entitle plaintiff below, who is the appellant, to recover.

It is a proceeding by way of inquest of office to have certain personal property adjudged escheated to the Territory.

It is the sequel to the decision of this court in *Territory of Alaska v. First National Bank of Fairbanks*, 22 Fed. (2nd.) 377.

Pursuant to the ruling of this court in that case

the bank made disclosures of a number of dead accounts, among which were about $2,600.00 worth of war savings certificates and liberty bonds deposited for safe keeping by one Charles Clinton Rice in 1918 and 1919. In conformity with local statute an information was then filed by the Attorney General on behalf of the Territory, describing the securities and alleging that Rice had died intestate without heirs and that the securities had escheated to the Territory.

In its answer the bank admitted the deposit of the securities as alleged, that the depositor had not been heard from for more than seven years or since the deposits were made, but the allegations of death intestate without heirs was denied for want of any information on the subject.

Upon this issue the cause was tried.

One of the officers of the bank was called by plaintiff as a witness and testified that the deposits were made in two lots, one in 1918 and one in 1919, that nothing was known of Rice at the bank, that he had not been seen or heard from since the last deposit was made, that neither he nor anybody on his behalf had called for the securities, that all of these were still on deposit with the bank, that the war savings certificates had matured and the interest coupons had not been detached from the bonds. He also testified that he had made inquiries at the probate court and

from anybody by the name of Rice in an endeavor to learn what had become of the depositor, but no trace of him could be found and his estate had not been probated. (Pages 12-14).

Evidence was also introduced showing the Attorney General published a notice in the Fairbanks newspaper asking for information about Rice, and that to this notice there had been no response. (Pages 15 and 20).

At the close of this testimony counsel for defendant moved to dismiss because the evidence was insufficient. This motion was granted in the following language:

> "The court is inclined to grant the motion on the ground that the proof is too meagre to sustain a decree in the case, the court being of the opinion that there must be some affirmative proof of the necessary facts warranting an escheatment. That is to say, that the person not only is dead but that he died intestate and that he died without heirs—leaving no heirs. I think the language of the statute requires some affirmative proof, however slight, on that subject and without testimony of that character, the court would not be authorized to grant a decree. Accordingly, the motion for non-suit will be granted and the case dismissed." (Page 19).
> Judgment was entered accordingly. (Pg. 10).
> This ruling is assigned as error.

It will be seen that the only question before the court is whether or not the evidence was sufficient to prove that Charles Clinton Rice was not only dead, but that he died intestate and without heirs, and that no one whatsoever is interested in the property in question.

ASSIGNMENT OF ERRORS.

More specifically the errors assign are as follows:

1. The court erred in finding that the plaintiff has failed to prove the allegations of his complaint.

2. The court erred in its finding and holding that the evidence introduced is not sufficient to entitle plaintiff to recover.

3. The court erred in granting and sustaining defendant's motion for nonsuit against plaintiff and dismissing this action at plaintiff's costs.

4. The court erred in making and entering judgment herein in favor of defendant and against plaintiff.

The various Territorial statutes hereafter referred to are, for the convenience of the court, attached to this brief as addenda.

ARGUMENT

I.

SUFFICIENCY OF THE FACTS

The case in many respects presents a situation typical of Alaska conditions. It frequently happens that people of the Territory disappear without being heard from, leaving no one to tell where they came from or where they went to.

The undisputed facts are that Charles Clinton Rice during the years of 1918 and 1919 deposited the securities in question with the defendant bank and has never been heard from since and no one has been found who knew him. That proof of those facts are sufficient to warrant the conclusion that he is dead cannot be doubted.

The common law rule, applicable to Alaska, is that a person who has not been heard from by his family for more than seven years will be presumed to be dead.

Davis v. Briggs, 97 U. S. 628.

This doctrine is based upon the theory that if a person was alive his family would likely hear from him. However, many reasons may be assigned why some people may not communicate with their families, but none whatever can be assigned why a person

will not call for his bank account if he is alive. It has, therefore, been held that failure for a long time to claim an account in the bank will raise the presumption of death.

Louisville Bank v. Public School Trustees, 83 Ky. 219.

Chapter 9 of the Laws of 1915 and Chapter 31 of the Laws of 1917, are illuminating of the Alaska situation. The Legislature by the former Act found it necessary to provide for the appointment of guardians to take charge of property which belong to persons who disappear, in order that such property may not be wasted or ruined for lack of care; and the latter Act provides for sending out searching parties for lost persons. Section 2 of the Act of 1915 provides:

> "If such missing person be not heard from for a period of six years continuously, he shall be presumed to be dead, and after the expiration of six years from the date of his disappearance, his estate may be administered in accordance with the then existing provisions of the law applicable to the administration of the estates of deceased persons."

It would seem that in Alaska presumption of death arises after disappearance for a period of six years. But that question does not have to be decided in this case, because the party in question has not

been heard from for more than nine years, and whether the common law rule above referred to has been amended by the Act of 1915 is, therefore, immaterial.

But while, from the evidence, the court must inevitably conclude that Rice is dead, the fact of his disappearance does not of itself raise the presumption that he died intestate and without heirs, as was said in the Kentucky case above cited. The presumption that there is nobody left who is interested in the estate is supplied by the fact that nobody appeared and claimed the property after a notice was published to all the world citing everybody interested to appear and show cause, if any there be, why the estate should not escheat to the Territory.

The statute of the Territory dealing with escheats imposes upon the Attorney General the duty of investigating whether or not there is ground for believing that the estate has escheated, and if he concludes that it has, it is his duty to file his petition setting up the facts and praying for an order to issue by the court citing all parties interested, to show cause why the estate should not escheat, which order is required to be published in newspapers for a period of six weeks. This was done in conformity with the Alaska statute. (Pg. 17-18). No appearance was made by any person claiming an interest in the property. Under the circumstances it became

the duty of the court to conclude that there was nobody interested, either as heirs, assigns, legatees, creditors or otherwise.

If by such citation title to property within the Territory cannot be settled by the courts, it is impossible to adjudicate the right to property left by people who have disappeared and of whom nothing is known.

The position of the lower court reduced to a legal doctrine is that although all interested parties have been duly cited, and although none had appeared, it is yet incumbent upon plaintiff to prove the negative —to prove that no one is interested in the property.

On that theory no settlement of any title in any person as against all the world could be possible. Even if some one had appeared and claimed the property either as heir, assignee, legatee, creditor or otherwise, it would be incumbent to prove that no one had a better right, which would be impossible. Under this doctrine, though a claimant prove he is an heir, he must also submit affirmative evidence that the party who disappeared died intestate, and in addition prove affirmatively that there are no creditors or assignees. And so on *ad infinitum.* There is only one way to settle title to property as against all the world and that is by a citation addressed to the whole world.

The language of the Alaska statute is perfectly plain on this subject. Section 6 of the Escheat Act (Chapter 40, Laws of 1921) provides:

> "If no person appear and answer within the time, judgment must be rendered that the Territory of Alaska is seized of the land, tenements and personal property in such information claimed."

The question here under consideration was passed upon by the Supreme Court in *Hamilton v. Brown*, 161 U. S. 256. In that case the court considered a statute of Texas dealing with escheats substantially like the Alaska statute. The question was whether or not the mere fact that a citation published in a newspaper hailing interested parties into court was unanswered, was sufficient to give the court jurisdiction over interested parties and sufficient to justify the court in concluding as a matter of law that the property had escheated. In that case the court said:

> "When, as is admitted in the present case, the former owner was dead; and in the proceedings for escheat, as shown by the record on which the defendants rely, the petition describes the land, gives the name of the former owner, and alleges that he died intestate and without heirs, that no letters of administration upon the estate had been granted, that there is no tenant or person in actual or constructive possession of

> the land, nor any person known to the petitioner claiming the estate therein, and that the land has escheated to the State of Texas; and an order of notice to all persons interested in the estate has been published, as required by the statute; and after a hearing of all who appear and plead, judgment is entered, describing the land, and declaring that it has escheated to the State,—*the judgment is conclusive evidence of the State's title in the land, not only against any tenants or claimants having had actual notice by scire facias, or having appeared and pleaded, but also against all other persons interested in the estate and having had constructive notice by publication.*"

The court pointed out that at common law the usual form of proceeding for this purpose was by an inquest of office, which was had upon a commission out of the court of chancery; and, if it resulted in favor of the King, then, by virtue of ancient statutes any one claiming title in the lands might by leave of that court, file a traverse, in the nature of a plea or defense to the King's claim. "*When there was a proper office found for the King,*" said the court "*that was notice to all persons who had claim to come in and assert them; and, until so traversed it was conclusive in the King's favor.*"

It was also pointed out in that case that the State has jurisdiction over the title to all property within its boundaries and may prescribe rules and

regulations for adjudicating such title. The court concluded:

> "When a man dies the Legislature is under no constitutional obligation to leave the title to his property, real or personal, in abeyance for an indefinite period; but it may provide for promptly ascertaining, by appropriate judicial proceedings, who has succeeded to his estate. If such proceedings are had, after actual notice by service of summons to all known claimants, and constructive notice by publication to all possible claimants who are unknown, the final determination of right of succession, either among private persons, as in the ordinary administration of estates, or between all persons and the State, as by inquest of office or similar process to determine whether the estate has escheated to the public, is due process of law, and a statute providing for such proceedings and determination does not impair the obligation of any contract contained in the grant under which the former owner held, whether that grant was from the State or from a private person."

For the convenience of the court all of Chapter 40 of the Laws of 1921 under which this proceeding is instituted is made one of the addenda to this brief.

By Section 9 of the Escheat Act in question it is the duty of the several banks in the Territory to report to the Attorney General all accounts whose owners have not been heard of by the bank for more

than seven years. When such report is made it becomes the duty of the Attorney General to investigate the matter and if he have reason to believe that the account, whether funds or property, have been escheated to the Territory, he shall institute the proper proceedings under this Act to have such property or funds adjudged the property of the Territory and transmitted to the Treasurer.

The presumption is that he discharged that duty.

But the Legislature evidently had in mind the possibility that interested parties may not receive the notice published, or be otherwise apprised of the pendency of the escheat proceedings. For that reason, out of abundance of caution, it is provided in Section 7 that any person not a privy to the proceedings may come into court any time within ten years after the adjudication of the escheatment and lay claim to the property, and recover the same from the Treasurer of the Territory, provided he can show he had no knowledge of the escheat proceedings.

The court below did not question its own jurisdiction over the title to the property. It dismissed the case purely upon the ground that the evidence was insufficient to show that the former owner left neither will nor heirs, and ruled that affirmative evidence proving the nonexistence of interested parties was indispensable.

Obviously, the effect of the citation is to throw the burden of proof upon the claimants. On no other theory of the law can title to property ever be settled.

As was aptly remarked by Holmes, Ch. J., in *Tyler v. Registration Court Judges*, 175 Mass. 71:

> "If (proceeding of this character) does not satisfy the constitution, a judicial proceeding to clear titles against all the world hardly is possible; for the very meaning of such a proceeding is to get rid of unknown as well as known claimants;—indeed, certainty against the unknown may be said to be its chief end—and unknown claimants cannot be dealt with by personal service upon the claimant."

In discussing the right to judgment against unknown claimants by constructive service of process, the Supreme Court in *American Lands Co. v. Zeiss*, 219 U. S. 47, quoted with approval the following language of the Supreme Court of California:

> "The judgments against known residents is based upon the ground that the State has power to provide for the determination of titles to real estate within its borders, and that, as against nonresident defendants or others, who cannot be served in the State, a substantial service is permissible, as being the only service possible. These grounds apply with equal force to unknown claimants. The power of the State

as to titles should not be limited to settling them as against persons named. In order to exercise this power to its fullest extent, it is necessary that it should be made to operate on all interests, known and unknown."

II.

SUFFICENCY OF NOTICE

In its answer the bank pleads as a separate defense that Charles Clinton Rice, his heirs, executors, administrators, successors in interest or assigns should have been joined as parties defendant.

While this question was given no consideration before the court below, and though this defense is not properly involved in this appeal, yet, out of abundance of caution, the plaintiff's view of the subject will be given below:

If any such claimants as counsel suggests were known they should, of course, have been served with process. This is required primarily in consideration of the provisions of Section 7 of the Territorial escheat Act, where it is provided that one who had no actual knowledge of the proceeding may claim the property any time within ten years after it is turned over to the Territorial Treasurer. But no such claimants were known.

Was it necessary to enumerate in the complaint

or in the notice all those different classes or groups of persons who might possibly be interested? This would be a physical impossibility because their number is legion.

Counsel will probably not contend very seriously that Rice, who is alleged and proven to be dead, should have been made a party.

If we undertake to recite the names of all the different classes, groups and characters of persons who possibly might be interested we are confronted with the unsurmountable. Rice might have left heirs, he might have left legatees, he might have left assigns, he might have left creditors, and in personal property neither heirs or legatees have an interest until creditors have been taken care of. Or we may assume that these heirs and legatees, and assigns and creditors are dead and in turn left other heirs, legatees, assigns and creditors, and so on *ad infinitum*. But, what is more, Rice might not have owned the property in the first place. He might have made the deposit in the bank as agent for others, and his principals, owning the property, might be dead, and each of them might have left heirs, or legatees or assigns or creditors. We might even go farther and assume the possibility that the securities had been stolen and belong to none of the classes above mentioned but were the property of diverse other persons, some of whom may have died and left

heirs and legatees and assigns and creditors who may in turn have died and left others interested. The moment we undertake to exercise our ingenunity in surmising possibilities we are dealing with infinity. And yet, this is seemingly what counsel expects an attorney to do in starting a proceeding of this kind.

Moreover, to institute a proceeding against a specified number of persons, or a specified class of persons, would limit the jurisdiction of the court to those particular persons or class of persons enumerated, and preclude the court from exercising jurisdiction over the title to the property as against the entire world. In such cases the doctrine applies with singular force that to mention some parties as defendants operates to exclude all others—*expressio unius est exclusio alterius.*

Precisely because the Alaska statute aims to settle title to the property as against all the world it is provided that the ordinary summons shall be served upon "known claimants," "and the court must make an order setting forth briefly the contents of the information and requiring all persons interested in the estate to appear and show cause, if any they have, within such time as the court making such order may fix, why the title should not vest in the Territory, which order must be published for at least six consecutive weeks * * * ."

This was all properly done, and this, as already observed, makes all the world defendants, giving all persons an opportunity to appear and be heard.

Speaking of the sufficiency of the notice Justice Miller, in *Huling v. Kaw Valley R. & I. Co.*, 130 U. S. 559 said:

> "Of course, the statute goes upon the presumption that, since all the parties cannot be served personally with such notice, the publication, which is designed to meet the eyes of everybody, is to stand for such notice. The publication itself is sufficient if it had been in the form of a personal service upon the party himself within the county. Nor have we any doubt that this form of warning owners of property to appear and defend their interests, where it is subject to demands for public use when authorized by statute, is sufficient to subject the property to the action of the tribunals appointed by proper authority to determine those matters."

This quotation is from a case involving the sufficiency of a general notice to the public of the institution of condemnation proceedings for the purpose of acquiring a right of way for a railroad. The notice in question "is directed to all persons owning lands on the line of the railroad as the same is now or may be located through Section 23, Township 11, Range 25, in the County of Wyandotte and State of Kansas; and it notified persons owning land in that

section that the commissioners duly appointed would on Monday, the 22nd of May, 1882, proceed to lay off the route for said road through said section and appraise the value and assess the damages to each quarter section through and over which the railroad might be located."

The court said as to the sufficiency of this notice:

> "If this notice had been read by the plaintiffs it was a clear and distinct notification to them that it would be determined at that time whether any, and how much, of their land in Section 23 would be taken for the railroad, and the value to be set upon it by the commissioners; and we think that this was all the notice they had a right to require."

The test applied by the court to all such notices is this: "If the notice had been read by the parties interested would it have been sufficient to apprise them of their opportunity to appear."

If the notice in the case at bar had been read by interested parties can anybody doubt that it was sufficient to apprise them of their opportunity and their duty to appear and defend their interest in court.

Learned counsel is evidently in error when he seemingly contends that jurisdiction cannot be ac-

quired over anybody who is not either by name or otherwise described in the caption or title of the action. So far as the information and the order in the case at bar are concerned, the statute requires neither caption nor title. While it is customary to give a proceeding at court a title, this is a contrivance resorted to purely for the sake of identifying the documents in the case. The caption is not a part of either the complaint or of the summons or any other process. It is only an identification mark. The essential feature of the proceeding is service of a document containing the statutory requisite and is sufficient if it apprise the party of his rights and opportunities to appear and defend.

Smith v. Watson, 28 Iowa 218.

In the last cited case Chief Justice Dillon, on behalf of the court stated the rule as follows:

> "A petition to foreclose a mortgage contained in the body thereof the essential allegations directing the parties, setting forth the facts constituting the cause of action, the relief sought, etc., but was addresed as follows: 'To the Judge of the District Court of Polk County, Iowa' and failed to name the parties, plaintiffs and defendants, at the head thereof, nor was it headed with the words 'petition' or the words 'petition in equity.' Held, that these defects were merely formal and the court did not err in re-

fusing on that account to dismiss the action on motion."

Similarly, in two Kentucky cases, *Bryant et al. v. Mack et al.*, 41 S. W. 774, and *Bryant v. Cheek*, 41 S. W. 776, it was held that the names of the parties need not be stated in the caption of the summons or the complaint.

No one will dispute the fact that in action strictly in rem no individuals need be named as defendants, because the action is purely to settle title to property as against all the world. In its present stage the case at bar has become an action purely in rem though originally a *quasi in rem*. In fact, no reason exists why the Legislature, if it thought proper, might not have provided for purely an action in rem in all cases involving escheats.

It might well happen, as has often happened heretofore, that personal property is found on dead, unidentified bodies and turned over to the Treasurer of the Territory. What sort of action would have to be instituted and what sort of notice would have to be given in such cases? Obviously Section 4 of the Act of 1921 would cover the case. It might well have happened that the securities here in question could have been found on the dead body of Charles Clinton Rice and by the finder turned over to the Territorial Treasurer. In such case an action purely in rem, without naming any parties, except plain-

tiff, could have been started under Section 4 of the Act in question.

That this contention is well justified appears from the opinion of the Supreme Court in the case of *Freeman v. Alderson*, 119 U. S. 185.

Speaking of actions purely *in rem the court* said:

> "The court acquires jurisdiction over the property in such cases by its seizure, and of the subsequent proceedings by public citation to the world, of which the owner is at liberty to avail himself by appearing as a claimant in the case."

Coming to the subject of actions *quasi in rem* the court said:

> "They differ, among other things, from actions which are strictly *in rem*, in that the interest of the defendant is alone sought to be affected, that citation to him is required, and that judgment therein is duly conclusive between the parties."

Then comes the important observation:

> "But if there is no appearance of the defendant, and no service of process on him, the case becomes in its essential nature a proceeding in rem, the only effect of which is to subject the property attached to the payment of

the demand which the court may find to be due plaintiff."

That had reference to a particular defendant. The world had not been cited as in actions strictly in rem. But the general principle applies,—where the world has been cited and none appear the action becomes one strictly *in rem*, because it settles the title as against all the world.

It will probably not be controverted that the Legislature had authority to prescribe the form of notice to be given in cases of this character. The court will not say that the form prescribed was insufficient unless it is clearly so,—that is, unless it was clearly insufficient to give notice of the proceeding pending. If the form of the notice to be given is not prescribed by statute, "it is clearly the duty of the court in which the proceeding is inaugurated to direct, either by standing rule or special order the kind of notice, etc, that shall be given."

In re Columbia Borough, 163 Penn. 259.

In the case at bar the information stated the facts and prayed that an order issue citing all parties interested to appear and show cause as required by the statute. In response to that prayer the court issued its order addressed "To Whom It May Concern," and then described the nature of the proceeding pending and fixing a time for interested parties to appear.

The form of the notice was a matter for the court to settle so long as the requirement of the statute was fully complied with.

It may well be admitted that a better notice could have been drawn. But that may be said about any notice. No one can draw a document so well that improvement may not be suggested.

Under the conditions prevailing in Alaska the question as to the sufficiency of the notice is purely academic. In a country like the interior of Alaska the notice is of no practical value aside from the technical one of conferring jurisdiction on the court.

Fairbanks has a population of less than twenty-five hundred people. The interior of Alaska has probably less than five thousand white people. The entire Territory at last census had less then twenty-eight thousand white people. Fairbanks has one newspaper and that one serves the entire interior. Under the circumstances the disappearance of a persons became a matter of common conversation. Had he any acquaintances it would be readily known, and his antecedents could have been readily traced had there been anybody in the Territory who was interested in him or knew anything about him. To reach those people no notice of any kind would need to be published. The subject would be a matter of general knowledge in this small community.

As an extra precaution the Attorney General

published an extra notice calling for information about the party involved in this case. But no information was obtained. (Pages 15 and 20).

Respectfully submitted,

JOHN RUSTGARD,

Attorney General of Alaska.

ADDENDA

CHAPTER 9, LAWS OF 1915

AN ACT

[S. B. 22.]

To repeal Chapter 60, "An Act to amend Chapter 88 of the Code of Civil Procedure in Respect to the Disposition of Estates of Persons Who Have Disappeared," of the Session Laws of 1913, approved April 29, 1913 (as found on page 155 of said Session Laws of 1913), and to amend Section 1730 of the Code of Civil Procedure of the Compiled Laws of Alaska, 1913, (as found on pages 609 and 610 of said Laws).

Be it Enacted by the Legislature of the Territory of Alaska:

Section 1. That Chapter 60, "An Act to amend Chapter 88 of the Code of Civil Procedure in Respect to the Disposition of Estates of Persons Who Have Disappeared," of the Session Laws of 1913, approved April 29, 1913, (as found on page 155 of the

said Session Laws of 1913) be, and the same is, hereby repealed.

Section 2. That Section 1730 of the Code of Civil Procedure of the Compiled Laws of Alaska, 1913 (as found on pages 609 and 610 of said Laws), be, and the same is, hereby amended by adding at the end of said Section 1730 the following paragraphs:

1. That whenever any person owning property in any precinct of the Territory shall disappear and can not, upon reasonable inquiry, be found, the commissioner of the precinct, in which real property is situated or personal property is found belonging to such missing person, may upon application of any relative who would be an heir of such missing person's estate in case of his death, appoint a guardian of the estate of such missing person, and in case there be no such heir, or in the event of the failure of such heir to apply, then such guardian may be appointed upon the application of any friend or other person interested in the estate of such missing person, and in the event none of the persons above specified apply then the court of its own motion may appoint such guardian when necessary to preserve the estate or prevent waste; and in such cases the provisions of Chapter Eigty-eight of the Code of Civil Procedure of Alaska relating to the guardianship of the estates of insane persons shall be applicable and shall govern proceedings affecting such estate.

2. If such missing person be not heard from

for a period of six years continuously, he shall be presumed to be dead, and after the expiration of six years from the date of his disappearance, his estate may be administered in accordance with the then existing provisions of the law applicable to the administration of the estates of deceased persons.

3. The appointment heretofore of any guardian of the estate of any missing person as provided by Chapter 60 of the Session Laws of 1913, whether made upon the application of a relative or other person, is hereby ratified.

Approved, April 19, 1915.

CHAPTER 31, LAWS OF 1917

AN ACT

[S. B. 24]

Providing a Relief Fund for the rescue and relief of persons lost while prospecting, boating, hunting, or otherwise in the Territory of Alaska, and declaring an emergency therefor.

Be it Enacted by the Legislature of the Territory of Alaska:

Section 1. That there be, and hereby is, created a fund out of any monies of the Territory of Alaska, now in the Territorial Treasury, or which shall hereafter come into the Territorial Treasury, not otherwise appropriated, for the rescue and relief of any

person or persons, party or parties, which may become lost while prospecting, boating, hunting or otherwise.

Section 2. The Territorial Treasurer shall be, and he hereby is empowered, authorized and required to set aside out of any monies of the Territory of Alaska, now in the Territorial Treasury, or which shall hereafter come into the Territorial Treasury, not otherwise appropriated, the sum of Ten Thousand ($10,000.00) Dollars for the purposes set forth in Section One (1) of this Act.

Section 3. All United States Commissioners shall be, and they are, hereby authorized and required, within their respective precincts, upon being notified that any person or persons, party or parties, are lost, or absent from their usual place of abode for such a period of time or under such circumstances as to have reasonable apprehension that the party or parties may be lost, to send out, under the guidance and direction of some competent person, who shall be appointed by such Commissioner to organize, take charge of and direct same, a rescue and relief party, for the purpose of rescuing and relieving such lost person or persons, party or parties, so reported to him to be lost; the expense for which shall be paid out of the Territorial Treasury upon vouchers, in duplicate, properly made out, signed and sworn to by the person so appointed to direct such rescue or

relief party. The oath to the vouchers herein provided for shall be taken and made before such United States Commissioner, and such vouchers be paid upon approval by the Governor.

Section 4. Every United States Commissioner shall receive for his services in sending out any search or relief party, the sum of Two ($2.00) Dollars upon vouchers in duplicate, properly signed and witnessed by two witnesses, which vouchers, together with the vouchers of the search or relief party, shall be mailed to the Territorial Treasurer, within ten (10) days from the sending out of said search or relief party.

Section 5. In all cases where there is no United States Commissioner, the Postmaster at such place shall be, and he hereby is, required to perform the duties required of United States Commissioners as prescribed in Section Three (3) and Four (4) of this Act, and in such cases the vouchers may be sworn to before a Notary Public and be paid upon approval of the Governor.

Section 6. The fund created by this Act shall be known as "The Relief Fund."

Section 7. An emregency is hereby declared to exist, and this Act shall take effect immediately upon its passage and approval.

Approved May 2, 1917.

CHAPTER 40, LAWS OF 1921

AN ACT

[S. B. 25]

Providing for the escheat of certain estates to the Territory of Alaska and providing for their disposal, and repealing former laws on that subject, and declaring an emergency.

Be it Enacted by the Legislature of the Territory of Alaska:

Section 1. When any person shall die intestate, without heirs, leaving real or personal property in the Territory, the same shall escheat to and become the property of the Territory of Alaska.

Section 2. The Territory of Alaska may maintain an action or proceeding necessary to recover the possession of any such property, or for the enforcement and protection of its rights thereto or on account thereof, in like manner and with like effect as any natural person. Such action or proceeding shall be prosecuted by the Territory of Alaska by and through the Attorney-General.

Section 3. Whenever the administrator of any estate shall find that his intestate left no heirs, or shall, after due search fail to find that his intestate left heirs, such facts shall be certified by the administrator to the probate court, and it shall then be the duty of the latter, as soon as the administra-

tor's final account is settled, to enter a decree adjudging that all the balance of the estate, whether real or personal property, has escheated to and become the property of the Territory of Alaska. The administrator shall immediately thereupon transmit a certified copy of such decree to the Treasurer of the Territory, together with the money and other personal property so escheated.

Section 4. Whenever the Attorney-General shall be informed or shall have reason to believe that any real or personal property has escheated to the Territory, and no administrator has been appointed for such estate, the Attorney-General shall, on behalf of the Territory, file an information in the District Court setting forth a description of the estate, the name of the person last seized, the name of the occupant or person in possession of the estate or any part thereof, if known, and of the person, if any such be known, claiming the estate or any part thereof, and the facts and circumstances in consequence of which the estate is claimed to have been escheated, with an allegation that by reason thereof the Territory has become the owner and entitled to the possession of the estate. Upon such information a summons must issue to such person or persons, requiring him or them to appear and answer the information within the time allowed by law in civil actions, and the court must make an order setting forth briefly the contents of the information and requiring all persons in-

terested in the estate to appear and show cause, if any they have, within such time as the court making such order may fix, why the title should not vest in the Territory, which order must be published for at least six consecutive weeks from the date thereof in a newspaper published in the precinct, if one be published therein, and in case no newspaper is published in the precinct, then in a newspaper published in the division in which the escheated property is located, as the court by order may direct.

Section 5. The court, upon information being filed, and upon the application of the Attorney-General either before or after answer, after notice to the party claiming such estate, if known, may, upon sufficient cause therefor being shown, appoint a receiver to take charge of such estate and receive the rents and profit of the same until the title to such estate is finally settled.

Section 6. All persons named in the information may appear and answer and may traverse or deny the facts stated in the information, and deny the title of the Territory of Alaska to the lands and tenements or other property therein mentioned, at any time before the time for answering expires, and any other person claiming an interest in such estate may appear and be made a defendant by motion for that purpose in open court within the time allowed for answering, and if no person appears and answers

within the time, judgment must then be rendered that the Territory of Alaska is seized of the lands, tenements and personal property in such information claimed. But if any person appears and denies the title set up by the Territory of Alaska or traverses any material facts set forth in the information, the issue of the fact must be tried as issues of fact are tried in civil actions. If, after the issues are tried, it appears from the facts found that the Territory of Alaska has good title to the estate in the information mentioned, or any part thereof, judgment must be rendered that the Territory of Alaska is seized thereof, and the Territory shall recover the costs of action against the defendant. Any personal property in such judgment decreed or adjudged to the property of the Territory shall be ordered by the court transmitted to the Treasurer of the Territory, and any person in possession of any real property in such proceeding adjudged or decreed to be the property of the Territory shall be ordered to deliver possession thereof to the Treasurer of the Territory.

Section 7. Within ten years after the judgment in any proceeding had under this Act, a person not a party or privy to such proceeding may file a petition in the District Court showing his claim or right to the property or the proceeds thereof, and that he had no knowledge of the proceeding provided for in the foregoing sections. A copy of such petition must be served upon the Attorney-General at least twenty

(20) days before the hearing of the petition, and the Attorney-General must answer the same, and the Court thereupon must try the issues as issues are tried in civil actions; and if it be determined that such person is entitled to the property or the proceeds thereof, the Court must order a copy of the judgment to be forwarded to the Treasurer of the Territory of Alaska. If the judgment of the Court be that the claimant is entitled to the property or the proceeds thereof, it shall be the duty of the Treasurer to deliver such property to such claimant, if such property has not been sold or otherwise disposed of, but not until claimant pays to the Treasurer the costs of the escheat proceedings; and, if the property has been sold or otherwise disposed of, it shall be the duty of the Treasurer to pay to such claimant, out of the general fund of the Territory, the amount received for such property, less the cost of the escheat proceedings, the cost of sale and other expenses connected with the conversion of the property to cash, and less any interest or dividends collected by the Territory upon such property which consists of bonds, stocks or other negotiable instruments. All persons who fail to appear and file their petitions within the time limited by law are forever barred, saving, however, infants and persons of unsound mind, from the right to appear and file their petitions at any time within the time limited, or one year after their respective disabilities ceased.

Section 8. Whenever personal or real property has escheated to the Territory and the same has been either by the probate court or by the district court, in the manner above provided, adjudged or decreed the property of the Territory, the Treasurer shall have authority to sell such property at such time and place as he deems of the greatest advantage to the Territory and to execute the proper conveyance therefor. But no such property shall be sold by the Treasurer except at public auction to the highest and best bidder and after public notice of the time and place of such sale has been given by publication in one or more newspapers for a period of not less than three weeks, in case of sale of real property, and for a period of not less than ten days in case of sale of personal property; PROVIDED, however, that personal property of the value of not more than fifty dollars ($50) may be sold at private sale, and stocks, bonds, notes or other negotiable instruments may be held by the Treasurer until paid in due course, and provided, further, that no sale shall be made except with the approval of the Governor, who shall, as such, endorse such approval upon the instruments of conveyance, in cases where such instruments are required by law to be excuted; but this provision shall not require the Governor to endorse his approval of sale upon negotiable instruments.

Section 9. It shall be the duty of every bank, banker or banking institution in the Territory who

holds on despoit or otherwise any fund, funds or other property of any kind or nature which has escheated to the Territory, to inform the Attorney-General of the fact; and each bank, banker or banking institution in the Territory who has on deposit or otherwise any fund, funds or other property to which no owner is known to such bank, banker or banking institution, or the owner of which has not been heard from by such bank, banker or banking institution for more than seven (7) years, shall in writing notify the Attorney-General of that fact; and if upon investigation the Attorney-General shall conclude, or have reason to believe, that such funds or other property have been escheated to the Territory, he shall institute the proper proceedings under the provisions of this Act to have such funds or property adjudged the property of the Territory and transmitted to the Treasurer.

Section 10. The provisions of this Act shall apply, as nearly as practicable, to all property or assets heretofore escheated to the Territory, and to all property or funds heretofore delivered to a Clerk of Court or the Treasurer of the Territory by order of any probate court as escheated property, and such property, heretofore so delivered to the Treasurer, may be by him sold or otherwise disposed of under the provisions of this Act, and shall be held by him subject to the rights of any legal heir under the provisions of Section 7 of this Act.

Section 11. Sections 608, 609, 610, 611, 612, 613, 614 and 615 of the Compiled Laws of Alaska, and Chapter 73 of the Session Laws of 1913, are hereby repealed.

Section 12. An emergency is hereby declared to exist, and this Act shall take effect and be in force from and after its passage and approval.

Approved May 5, 1921.